

324.

A testator may under this section revoke a clause of his will without invalidating the remaining clauses, provided he does not thereby enlarge the estate of any one who takes under the will or change the character of the remaining provisions. When a will is found among the private papers of the testator cancelled or obliterated, it is presumed to have been so cancelled or obliterated *animo revocandi*. What amounts to a cancellation or obliteration. When a testator is arrested in his purpose and changes his determination to revoke the will before the act of obliteration is completed, the will is unrevoked. Cases reviewed. *Safe Deposit & Trust Co. v. Thom*, 117 Md. 161.

A later will held to revoke a prior one although it did not in terms do so. *Gardner v. McNeal*, 117 Md. 31.

326.

The act of 1910, chapter 37 (p. 323), held to have no application to cases where a testator became insane or incompetent before the passage of said act. Statutes will not be construed retrospectively if they can reasonably be construed prospectively only, particularly if by a retrospective construction, injury is done. The word "shall" ordinarily refers to the future, but in remedial statutes, it can be used in a general sense including both past and future. This section does not mean that if a testator becomes insane or incompetent between the execution of the will and the death of the devisee, but recovers or has lucid intervals during which he could have revoked or altered his will, the devise must lapse, as such a construction would be unreasonable. *Quære*, Does the act of 1910, chapter 37, apply only to wills made after its passage? History of this section. *Hemsley v. Hollingsworth*, 119 Md. 438.

To the first note under the sub-title "Generally" to section 326 on page 2149 of volume 2 of the Annotated Code, add the case of *Hemsley v. Hollingsworth*, 119 Md. 440.

331.

This section means that all the real estate of any testator, except that which is specifically devised, shall be chargeable, etc. Since the passage of this section, the implying a power to sell founded upon the supposed necessity for a sale by executors in order to effectuate the legacies, cannot be urged with the same force as prior thereto. The sale under this section cannot be made by the executors, but must be made by the legatees. A will held to show no "contrary intention" within the meaning of this section. *St. John's Church v. Deppoldsman*, 118 Md. 244.

1912, ch. 144.

332A. Whenever by any form of words in any deed, will or other instrument executed after the thirty-first day of May, in the year nineteen hundred and twelve, a remainder in real or personal property shall be limited, mediately or immediately, to the heirs or the heirs of the body of a person to whom a life estate in the same property is given, the persons who on the termination of the life estate are then the heirs or heirs of the body of such tenant for life, shall take as purchasers by virtue of the contingent remainder so limited to them.

This section referred to in a case dealing with the Rule in *Shelley's Case* prior to the adoption of this section. *Holmes v. Mackenzie*, 118 Md. 217.

1904, art. 93, sec. 327. 1888, art. 93, sec. 319. 1860, art. 93, sec. 307. 1810, ch. 34, sec. 2. 1884, ch. 293. 1888, ch. 544. 1894, ch. 151. 1914, ch. 238.

334. Every will or other testamentary instrument executed without this State in the mode prescribed by law, either of the place where